

Washington, D.C. 20548

## Decision

**Matter of:** Defense Logistics Agency and Small Business  
Administration Contract No. DLA100-78-C-5201

**File:**

B-225175

Date: February 4, 1987

## DIGEST

There is no basis to find the Small Business Administration (SBA) liable to a procuring agency for reprocurement costs for defective goods delivered by a defaulted small business subcontractor under a contract awarded to SBA pursuant to section 8(a) of the Small Business Act. SBA's responsibility as a "prime contractor" under the 8(a) program is only as a conduit in the award process between the procuring agency whose needs are in issue and the small business subcontractor that will meet those needs; SBA does not guarantee satisfactory performance by the subcontractor.

## DECISION

This decision concerns a claim by the Defense Logistics Agency (DLA) against the Small Business Administration (SBA) for reprocurement costs for defective goods delivered to DLA by a small business subcontractor under contract No. DLA100-78-C-5201.

DLA asserts that SBA is liable for these costs because SBA specifically agreed to a Warranty Clause (L67) in its contract with DLA, and this clause, which is a special clause, and not a general provision of the contract, provides rights which are "in addition to . . . any rights afforded to the government by any other clause in the contract." Therefore, while the contract provides that the general provisions of the contract are not operative between SBA and DLA, but are applicable to SBA's subcontractor, DLA contends that the warranty clause, a special provision, is not superseded by this language.

SBA contends that the warranty clause is a general provision which is applicable only to the subcontractor and not to SBA. We agree with SBA.

037954 - 132111

The contract in question was awarded to SBA by DLA pursuant to section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), which authorizes SBA to enter into contracts with government agencies for the purpose of arranging for performance of the contracts by socially and economically disadvantaged small business concerns. Here, SBA subcontracted with P.F. Industries (PFI) to perform the contract. PFI delivered certain defective merchandise to DLA under the contract and subsequently declared bankruptcy, with the result that PFI's contract was terminated for default. DLA asserts that SBA is obligated to reimburse DLA for procurement costs for the defective merchandise as a result of a warranty clause, L67, contained in the contract between DLA and SBA.

The contract between DLA and SBA is a standard form 26 prefaced by a number of clauses entitled "Special Clauses for 8(a) Contracts." These clauses provide, in relevant part, that SBA shall perform the requirements of the prime contract by subcontracting pursuant to section 8(a); that PFI is named as the subcontractor; that PFI is designated as "contractor" with respect to the remainder of the contract clauses; and that PFI is required "for and in the stead of the SBA [to] fulfill and perform all of the requirements of this prime contract." In addition, there is a proviso that: "The general provisions of this contract are not operative between SBA and [DLA] but they are applicable to SBA's subcontractor." In light of this language, the responsibilities of the "contractor" contained in the subsequent warranty clause, L67, on which DLA bases its claim of liability on the SBA, refer only to PFI--designated as "contractor."

In any event, in view of the purposes of the 8(a) program, we have held that:

"SBA's role in the section 8(a) program, however, while nominally that of a 'prime contractor,' actually is that of a conduit between the contracting agency that has a requirement that can be met by a small disadvantaged business, and that business; the only sense in which SBA is expected to 'perform' the contract is by subcontracting the work to an eligible small business firm."  
Association of Village Council Presidents,  
B-209712, July 26, 1983, 83-2 C.P.D. ¶ 126.

Accordingly, there is no legal basis to hold SBA liable to DLA, the procuring activity, for procurement costs arising

from a warranty claim which is properly assessable to the  
defaulted small business subcontractor under an 8(a) award.  
Soil Conservation Service and Small Business Administration  
Contract No. AG18scs-00100, B-185427, Sept. 21, 1977, 77-2  
C.P.D. ¶ 208.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
General Counsel